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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 14th August 2025

S.R.O. No. 670/2025—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th June 2025 passed in the I.D. Case No. 10 of 2024 by the Presiding Officer, Labour Court, Bhubaneswar on the industrial dispute between the management of M/s Asian School of Technology, Represented by its Chairman, Shri Jitana Kumar Sahoo, Corporate Office at Plot No. N-5/66, IRC Village, Nayapalli, Bhubaneswar, PIN-751015, Dist. Khurda and Ratnakar Ojha, aged about 56 years., S/o Late Dhadu Ojha, Resident of Plot No. K-7/563, Kalinga Nagar, P.O. Ghatikia, Bhubaneswar-751003 is hereby published as in the schedule below :—

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 10 of 2024

Dated the 30th June 2025

Present :

Smt. Meenakshee Priyadarsinee,
Presiding Officer,
Labour Court,
Bhubaneswar.

Between :

M/s Asian School of Technology,
Represented by its Chairman,
Shri Jitana Kumar Sahoo,
Corporate Office at Plot No. N-5/66,
IRC Village, Nayapalli, Bhubaneswar,
PIN-751015, Dist. Khurda. . . First Party—Management

And

Ratnakar Ojha, aged about 56 years,
S/o Late Dhadu Ojha,
Resident of Plot No. K-7/563,
Kalinga Nagar, P.O. Ghatikia,
Bhubaneswar-751003. . . Second Party—Workman

Appearances:

Shri Jitana Kumar Sahoo	:	For the First Party—Management
Shri Ratnakar Ojha	:	The Second Party himself

AWARD

This is an application under Section 2-A(2) of the Industrial Disputes Act, 1947 (in short 'the Act') filed by the above named second party challenging the action of the first party management in terminating him from service with effect from the 14th January 2023 by way of refusal of employment as illegal and unjustified with a prayer for his reinstatement in service with full back wages coupled with other consequential service benefits.

2. The case of the second party in brief as set out in the claim statement is that with effect from the 2nd March 2014 he was appointed to work under the first party management as an 'Office Assistant' with a monthly consolidated wages of Rs. 8,000 and continued as such till the 13th January 2023 when the management deined him employment. The ground of such denial was his demand for arrear salary deducted during Covid-19 period and submission of statement by him before the Enforcement Officer about his designation as Lecturer (ETC) Engg. (Electronics & Telecommunication Engineering) and about the date of joining as the 1st January 2017 in the officer records of the management even though he was appionted as an 'Office Assistant' and also allowed to join in such post on the 2nd March 2014. With regard to his appointment as Office Assistant he was also issued with an appointment letter by the management. It is alleged by the second party that the management while refusing him employment has not followed the provision of I.D. Act so also the principle of natural justice. The second party on such count has claimed that the action of the management cannot be stated to be legal or justified. The second party, however requested the management for his reinstatement in service and for payment of his arrear dues in the form of written representation, but the same did not yield any result, for which he raised an industrial dispute before the DLO, Khurda at Bhubaneswar for his intervention. But, as the dispute could not be resolved despite lapse of more than 45 days of filing of complaint before the concerned DLO, the second party preferred the present case before this Court resorting to the provisions of Section 2-A (2) of the Act for adjudication with the aforesaid prayer.

3. The first party management entered into contest in the case and also filed its written statement thereby refuting almost all the allegations brought against it by the second party in his pleading. As it appears, the management at the threshold challenged the maintainability of the claim of the second party on the ground that he has not yet been terminated from service as alleged, rather he himself absconded from his duty without any information to his employer. The management while admitting the engagement of the second party as an Office Assistant under it, has come out with a case at the same time that the second party is not a 'workman' within the meaning of the provisions of I.D. Act and that such engagement of the second party was on temporary basis and he was already paid all his remunerations as per his service condition. It is averred in the written statement that the management is ready to reinstate the second party in his service if the second party convinces it by assigning the reasonable grounds for his discontinuation in duty. The management, in the circumstances has prayed for the rejection of the claim of the second party.

4. A rejoinder to the written statement is filed by the second party, wherein the second party while reiterating the stands taken in his Claim Application has contended that he has never absconded from the service, rather he was terminated from service by way of refusal of employment.

The second party stated that the management has also not taken any step against him for his so called absence from duty and the present case is maintainable in the eye of law and fact.

5. The rival contentions of the parties emerge the following issues :—

ISSUES

(i) Whether the action of the management in terminating the services of the second party with effect from the 14th January 2023 by way of refusal of employment is legal and/or justified ?

(ii) Whether the second party is a workman within the meaning of the provisions of the I.D. Act ?

(iii) If not,what other relief(s) the second party is entitled to ?

6. To substantiate their respective stand both parties have adduced oral as well as documentary evidence. The second party workman examined himself as sole witness and placed reliance on documents marked Ext. 1 to Ext. 17. The management in its turn examined himself as the only witness and placed reliance on documents marked Ext. A to Ext. C.

FINDINGS

7. *Issue No. (ii)*—Needless to say that in order to claim something under I.D. Act the second party has to establish that he is a 'workman' within the meaning of Section 2(s) of the Act. There is no dispute to the effect that the first party management is an 'industry' within the meaning of Section 2(j) of the Act. But, as stated above the management has thoroughly challenged the status of the second party in this case. So, the onus is on the management to prove that the second party is not a workman under it as per the provisions of I.D. Act. Undisputably the second party was initially appointed as an 'Office Assistant' vide Ext. 1 by the management. The M.W. No. 1 during his evidence categorically stated that the second party was engaged as an 'Office Manager' on a purely temporary and contractual basis. But, there is no material before this Court to infer that the second party was ever appointed as Office Manager as stated. However, it is well settled that basing on the designation of an employee or the remuneration attached to such designation, the status of an employee cannot be decided. The determinative factor is the primary duties assigned to a concerned employee and not some work incidentally done. But, nothing has been brought forward by the management in this case from which it could have been revealed that the second party was having managerial and administrative power during his tenure of work. The management also cross-examined the second party thoroughly, but nothing substantial has been elicited from his mouth to that effect.

In view of the above discussions, the second party is held to be a workman within the meaning of Section 2(s) of the I.D. Act.

8. *Issue Nos. (i) & (iii)*—For the sake of covenience both the issues are taken up together as the facts involved therein are inter-linked on common facts.

As stated above the second party has examined himself as W.W. No. 1 with reference to his affidavit evidence in which the second party with vehemence has assailed his termination from service by the management in the guise of refusal of employment. It is an admitted fact that the second party was an employee of the management. But, on a common reading of the averments advanced by the management, it is found that the management has never terminated the second party from service, rather he remined absent from duty since the 14th January 2023. So, a short

question that arises for consideration as to whether the second party terminated from service by way of refusal of employment or he has abandoned the employment on his own. In the context, this Court is off to peruse the pleadings of the management. The management in its WS at Para. 10 categorically stated that it is willing to accept the service of the complainant and also agreed to reinstate the service of the complainant after satisfying the reason of the discontinuation of duty of the second party. Admittedly, there is nothing on record to show that after such offer of the management the second party shows his interest to join under the management. So, it *prima facie* appears that this is not a case of termination by way of refusal of employment as alleged. One thing may be stated here that if the management had the intention to terminate the services of the second party, then it would never have offered the second party his reinstatement in service. In the present context it is worthy to place reliance on the decision of the Hon'ble Bombay High Court in the case of Sonal Garments *Vrs.* Trimbak Shankar Karve wherein it has been held that "whenever the employer offers to reinstate the workman at any stage of the dispute or proceeding and if the workman does not accept the offer even without prejudice to his rights and contentions he will not be entitled to continue his claim for reinstatement in the proceedings and he will also be not entitled to claim any back wages from the date of such offer, conditional or unconditional. He must first accept the offer and get reinstated in employment and therefore continue to contest for the relief of back wages if any. In the present case there was an unconditional offer of reinstatement made by the employer in the written statement itself but it was not accepted by the workman. Therefore, as stated by me hereinbefore, he is not entitled to get reinstatement with full back wages at all".

It would not be out of place to mention here that there is nothing on record to show that the second party has ever accepted such offer of the management at any point of time. So, in view of the principles laid down by the Hon'ble High Court in the cases of Sonal Garments *Vrs.* Trimbak Shankar Karve *(supra)* the second party is not entitled to the reliefs claimed in this case.

The application is disposed of accordingly.

Dictated and corrected by me.

MEENAKSHEE PRIYADARSINEE
30-06-2025
Presiding Officer,
Labour Court, Bhubaneswar

MEENAKSHEE PRIYADARSINEE
30-06-2025
Presiding Officer,
Labour Court, Bhubaneswar

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By order of the Governor
MADHUMITA NAYAK
Special Secretary to Government

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